

AMENDED IN SENATE JULY 20, 2001

AMENDED IN SENATE JULY 17, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

SENATE BILL

No. 78

Introduced by ~~Senator Polanco~~ *Senators Polanco and Sher*

May 17, 2001

An act to amend Sections 341.5, 359, and 379 of, to amend and repeal Section 367 of, to add Sections 365.1, 454.10, and 454.11 to, and to add Article 16 (commencing with Section 399.20) and Article 17 (commencing with Section 399.30) to Chapter 2.3 of Part 1 of Division 1 of, to repeal Section 361 of, to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, and to repeal and add Section 330 of, the Public Utilities Code, relating to public utilities; ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as amended, Polanco. Electric Utility Rate Stabilization Act of 2001.

(1) Existing provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical corporations regulated by the Public Utilities Commission of uneconomic transition costs for a certain period of time, and requires the commission to establish a mechanism for recovery of these costs.

This bill would also provide for recovery by a specified electrical corporation of qualified costs, as defined, subject to verification and approval by the commission, if the corporation and its holding company enter into a specified binding and enforceable agreement with the state

for performance of various requirements including, the sale to retail end-use customers of and the application of cost-based rates to all electricity produced by generation assets owned by the corporation, dedication of certain generation output to the state, conveyance of certain lands to the state, termination of actual or potential litigation, agreement to resume procurement of full electricity requirements for its service area as soon as it is deemed creditworthy or January 1, 2003, whichever is sooner, providing an irrevocable option to purchase transmission facilities, and application of a specified tax refund to reduction or elimination of debt. The bill would require the commission, until December 15, 2006, to approve an irrevocable financing order for the recovery by the electrical corporation of an electrical corporation debt repayment set-aside, in an amount not to exceed \$2,500,000,000 of qualified costs. The bill would require the electrical corporation repayment set-aside established pursuant to these provisions to be paid exclusively by customers with electric loads exceeding ~~425~~ 500 kilowatt billing demand. The bill would enact various other related provisions in that regard, including authorizing the issuance of electricity market stabilization bonds by the electrical corporation secured by the set-aside and requiring the approval of the commission of those bonds. The bill would require the electrical corporation to apply the net proceeds from the sale of electricity market stabilization bonds to certain of the corporation's debts.

(2) Existing law requires the commission to identify certain generation-related costs of electrical corporations that are uneconomic under the restructuring of the electrical industry, and provides for recovery of those uneconomic costs by the corporations from customers in a specified manner.

This bill would provide that these and certain related provisions are repealed on January 1, 2002.

(3) The Public Utilities Act provides for the continued regulation by the commission of the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, but pursuant to Chapter 2 of the 2001–02 First Extraordinary Session, also prohibits any disposal of a facility of this nature prior to January 1, 2006.

This bill would enact new provisions authorizing the commission to require an electrical corporation to make direct investments in generation facilities, and providing for the commission to approve rates sufficient to support that investment. The bill would prohibit the commission, on or before January 1, 2006, from reducing a specified

electrical corporation's authorized rate of return on generation assets below a certain level, if the electrical corporation has entered into the specified binding and enforceable agreement with the state described above in paragraph (1).

(4) Existing law provides that a violation of the Public Utilities Act is a crime.

This bill, by enacting new requirements relative to electrical corporations, would thereby impose a state-mandated local program.

(5) Existing law providing for the restructuring of the electrical industry provides for creation of a Power Exchange to provide an efficient competitive auction for power that meet the loads of all exchange customers at efficient prices.

This bill would repeal these provisions. The bill would make other changes to various electrical restructuring provisions and would add legislative findings in that regard.

(6) This bill would enact other related provisions.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(8) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The wholesale electricity market in California is grossly
4 dysfunctional, characterized by an abuse of seller market power
5 that has resulted in unjust and unreasonable wholesale prices for
6 electricity.

7 (b) As a result of the state's dysfunctional wholesale market,
8 residential and business consumers have endured the largest single
9 retail rate increase in the state's history, the state's largest electrical
10 corporation is bankrupt, a second electrical corporation is on the

1 verge of insolvency, and reliable electricity service has been
2 jeopardized.

3 (c) Regulatory jurisdiction to ensure just and reasonable
4 wholesale prices rests wholly with the Federal Energy Regulatory
5 Commission (FERC).

6 (d) Although state policymakers, including state and federal
7 legislative leaders, the Governor, and governors of other western
8 states, have requested FERC to impose regional price caps to
9 achieve just and reasonable wholesale prices, FERC has refused to
10 do so.

11 (e) The current financial condition of the electrical
12 corporations doing business in this state, and the unstable
13 condition of the electric utility market in California is
14 unsustainable.

15 (f) It is in the state's interest to have functional creditworthy
16 utilities providing essential electricity service to California
17 consumers at just and reasonable rates.

18 (g) The burden of assuring a utility's creditworthiness should
19 not be borne by the state's ratepayers alone, but should be achieved
20 through contributions from the utility, its parent company,
21 creditors, and ratepayers.

22 (h) For making a substantial contribution toward making a
23 utility a creditworthy entity, ratepayers should receive tangible
24 benefits equivalent to the value of their contribution in making a
25 utility creditworthy.

26 (i) It is the intent of the Legislature, through the enactment of
27 the act adding this section, to set the conditions under which an
28 electrical corporation may become creditworthy and meet its
29 obligations to serve consumers with reliable electricity service at
30 just and reasonable rates.

31 SEC. 2. Section 330 of the Public Utilities Code is repealed.

32 SEC. 3. Section 330 is added to the Public Utilities Code, to
33 read:

34 330. (a) The Legislature finds and declares all of the
35 following:

36 (1) The delivery of electricity over transmission and
37 distribution systems is currently regulated, and will continue to be
38 regulated to ensure system safety, reliability, environmental
39 protection, and fair access for all market participants.



(2) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

(3) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.

(4) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems.

(5) The people of California expect the utilities and the government of the state to assure safe and reliable electric service at a just and reasonable price.

(6) The decision of the California Public Utilities Commission in Decision 95-12-063, modified by Decision 96-01-009, to diminish the obligation of regulated electric utilities to serve their California customers with electric energy has severely harmed both the customers and the utilities.

(7) As the direct result of that policy, utilities divested themselves of facilities essential to their ability to meet their obligation to serve, including sales of electric generation facilities to third parties, and transfer of operational control of transmission facilities to the Independent System Operator (ISO), an entity subject to dual control by state and federal authorities.

(8) As the direct result of that policy, utilities have been unable to fully serve their customers with electric energy, and have been required to acquire electric energy through purchases in wholesale markets.

(9) As the direct result of that policy, utilities and California authorities have been unable to maintain electric service stability or reliability.

(10) Wholesale electricity markets have been characterized by the existence of seller market power, and will continue to be characterized in the future by seller market power, until state and federal authorities act cooperatively to eliminate that market power.

(11) The scope and scale of seller market power have increased with the utility divestiture of powerplants and transfer of

1 operational control of the transmission system to the ISO, as has
2 the cost to utilities and their retail customers.

3 (12) Prices for electric energy sold for resale, which are under
4 the jurisdiction of the federal government, have not been just and
5 reasonable since May 1, 2000, due to the existence and exercise of
6 seller market power.

7 (13) Between May 1, 2000, and May 1, 2001, California
8 utilities and their retail customers have paid least \$8.9 billion in
9 excess cost due to seller market power.

10 (14) The wholesale electricity market institutions created by
11 the commission in D. 95-12-063, and envisioned by Assembly Bill
12 1890 have collapsed, with the result that there is no transparent day
13 ahead or hour ahead market and no pricing transparency in
14 wholesale markets at the present time or for the foreseeable future.

15 Specifically:

16 (A) The Power Exchange as envisioned by Assembly Bill 1890
17 is defunct.

18 (B) The utilities as load serving entities are unable to
19 participate in the wholesale markets because sellers do not
20 consider them creditworthy.

21 (C) The state through the Department of Water Resources
22 (DWR) has been forced to purchase electric energy in place of the
23 utilities, in a manner characterized by extreme secrecy intended to
24 reduce collusion and fraud by wholesale sellers.

25 (D) The ISO has become a significant buyer of last resort
26 through out of market purchases for energy when the utilities and
27 the DWR refuse to pay excessive prices, or when sellers withhold
28 energy from forward markets through failures to bid.

29 (15) The existence of seller market power in the California
30 wholesale electric markets affecting California has been formally
31 found and determined by the Federal Energy Regulatory
32 Commission (FERC).

33 (16) Federal authorities have been unwilling to take effective
34 action to relieve wholesale prices or mitigate seller market power,
35 contrary to their legal obligation.

36 (17) In order to restore the credit and operational capability of
37 the utilities and to enable the DWR to make purchases at
38 market-power driven prices, the commission has increased retail
39 electric rates by an annual amount of over \$7 billion since January

4, 2001, so that electric rates in California are among the highest in the nation.

(18) Since January 2001, California has been beset by actual and threatened blackouts due to supply withholding by wholesale sellers, who use both direct and indirect means to make electric energy unavailable.

(19) The reduction in reliability is directly related to the faulty, now partially collapsed market structure and institutions created by the commission Decision 95-12-063, and as codified by Assembly Bill 1890.

(20) The state has a duty to its people to assure the reliability of the electricity supply system, which has been undermined by the orders of the Public Utilities Commission in Decision 95-12-063.

(21) The expectations and assumptions that the policy changes embodied in Assembly Bill 1890 would result in consumer benefits, enhanced reliability, lower rates and technological innovation have proven illusory.

(22) Many owners of powerplants located within the California ISO control area are not required to consider the local need for power before purporting to schedule their supplies for export to other control areas. Most generators in other control areas throughout the Western Interconnection are controlled by vertically-integrated utilities with an obligation to assure adequate service to the customers within their respective service territories.

(23) It is essential to the public health, safety and welfare of the people of the state that the California ISO have control over the unit commitment and dispatch of powerplants located within the ISO control area in order to assure the provision of reliable service to the customers located therein.

(24) Fully empowering state entities, including the commission, the utilities, the ISO and the DWR to overcome seller market power, reduce prices for electric energy and restore grid reliability is in the public interest.

(b) The purpose of this chapter is to return electrical corporations to creditworthiness in order to enable them to invest in generation and procure energy. The Legislature finds this purpose is in the public interest.

SEC. 4. Section 341.5 of the Public Utilities Code is amended to read:

1 341.5. (a) The Independent System Operator bylaws shall
2 contain provisions that identify those matters specified in
3 subdivision (b) of Section 339 as matters within state jurisdiction.
4 The bylaws shall also contain provisions which state that
5 California's bylaws approval function with respect to the matters
6 specified in subdivision (b) of Section 339 shall not preclude the
7 Federal Energy Regulatory Commission from taking any action
8 properly within its jurisdiction necessary to address undue
9 discrimination or other violations of the Federal Power Act (16
10 U.S.C.A. Sec. 791a et seq.) or to exercise any other commission
11 responsibility under the Federal Power Act.

12 (b) Any necessary bylaw changes to implement the provisions
13 of Section 335, 337, 338, 339, or subdivision (a) of this section,
14 or changes required pursuant to an agreement as contemplated by
15 subdivision (a) of this section with a participating state for a
16 regional organization, shall be effective upon approval of the
17 respective governing boards and the Oversight Board and
18 acceptance for filing by the Federal Energy Regulatory
19 Commission.

20 SEC. 5. Article 4 (commencing with Section 355) of Chapter
21 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

22 SEC. 6. Section 359 of the Public Utilities Code is amended
23 to read:

24 359. (a) It is the intent of the Legislature to to improve
25 reliability, to support mutual assistance among load serving
26 entities, to achieve equitable pricing policies in the western states,
27 and to improve the access of consumers served by the Independent
28 System Operator to functional and transparent markets.

29 (b) The preferred means by which the objectives described in
30 subdivision (a) should be realized is through the adoption of a
31 regional compact or other comparable agreement among
32 cooperating party states.

33 (c) The agreement described in subdivision (b) should provide
34 for all of the following:

35 (1) An equitable process for the appointment or confirmation
36 by party states of members of the governing board of the regional
37 organization.

38 (2) Mechanisms by which each party state, jointly or
39 separately, can oversee effectively the actions of the Independent
40 System Operator as those actions relate to the assurance of

1 electricity system reliability within the party state and to matters
2 that affect electricity sales to the retail customers of the party state
3 or otherwise affect the general welfare of the electricity consumers
4 and the general public of the party state.

5 (3) The adherence by publicly owned and investor-owned
6 utilities located in party states to enforceable standards and
7 protocols to protect the reliability of the interconnected regional
8 transmission and distribution systems.

9 SEC. 7. Section 361 of the Public Utilities Code is repealed.

10 SEC. 8. Section 365.1 is added to the Public Utilities Code, to
11 read:

12 365.1. The actions of the commission pursuant to this chapter
13 shall be consistent with the findings and declarations contained in
14 Section 330.

15 SEC. 9. Section 367 of the Public Utilities Code is amended
16 to read:

17 367. The commission shall identify and determine those costs
18 and categories of costs for generation-related assets and
19 obligations, consisting of generation facilities, generation-related
20 regulatory assets, nuclear settlements, and power purchase
21 contracts, including, but not limited to, restructurings,
22 renegotiations or terminations thereof approved by the
23 commission, that were being collected in commission-approved
24 rates on December 20, 1995, and that may become uneconomic as
25 a result of a competitive generation market, in that these costs may
26 not be recoverable in market prices in a competitive market, and
27 appropriate costs incurred after December 20, 1995, for capital
28 additions to generating facilities existing as of December 20, 1995,
29 that the commission determines are reasonable and should be
30 recovered, provided that these additions are necessary to maintain
31 the facilities through December 31, 2001. These uneconomic costs
32 shall include transition costs as defined in subdivision (f) of
33 Section 840, and shall be recovered from all customers or in the
34 case of fixed transition amounts, from the customers specified in
35 subdivision (a) of Section 841, on a nonbypassable basis and shall:

36 (a) Be amortized over a reasonable time period, including
37 collection on an accelerated basis, consistent with not increasing
38 rates for any rate schedule, contract, or tariff option above the
39 levels in effect on June 10, 1996; provided that, the recovery shall
40 not extend beyond December 31, 2001, except as follows:

1 (1) Costs associated with employee-related transition costs as
2 set forth in subdivision (b) of Section 375 shall continue until fully
3 collected; provided, however, that the cost collection shall not
4 extend beyond December 31, 2006.

5 (2) Power purchase contract obligations shall continue for the
6 duration of the contract. Costs associated with any buy-out,
7 buy-down, or renegotiation of the contracts shall continue to be
8 collected for the duration of any agreement governing the buy-out,
9 buy-down, or renegotiated contract; provided, however, no power
10 purchase contract shall be extended as a result of the buy-out,
11 buy-down, or renegotiation.

12 (3) Costs associated with contracts approved by the
13 commission to settle issues associated with the Biennial Resource
14 Plan Update may be collected through March 31, 2002; provided
15 that only 80 percent of the balance of the costs remaining after
16 December 31, 2001, shall be eligible for recovery.

17 (4) Nuclear incremental cost incentive plans for the San Onofre
18 nuclear generating station shall continue for the full term as
19 authorized by the commission in Decision 96-01-011 and Decision
20 96-04-059; provided that the recovery shall not extend beyond
21 December 31, 2003.

22 (5) Costs associated with the exemptions provided in
23 subdivision (a) of Section 374 may be collected through March 31,
24 2002, provided that only fifty million dollars (\$50,000,000) of the
25 balance of the costs remaining after December 31, 2001, shall be
26 eligible for recovery.

27 (6) Fixed transition amounts, as defined in subdivision (d) of
28 Section 840, may be recovered from the customers specified in
29 subdivision (a) of Section 841 until all rate reduction bonds
30 associated with the fixed transition amounts have been paid in full
31 by the financing entity.

32 (b) Be based on a calculation mechanism that nets the negative
33 value of all above market utility-owned generation-related assets
34 against the positive value of all below market utility-owned
35 generation related assets. For those assets subject to valuation, the
36 valuations used for the calculation of the uneconomic portion of
37 the net book value shall be determined not later than December 31,
38 2001, and shall be based on appraisal, sale, or other divestiture.
39 The commission's determination of the costs eligible for recovery
40 and of the valuation of those assets at the time the assets are

exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.

(c) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the additions are necessary to maintain the facilities through December 31, 2001. All “going forward costs” of fossil plant operation, including operation and maintenance, administrative and general, fuel and fuel transportation costs, shall be recovered solely from independent Power Exchange revenues or from contracts with the Independent System Operator, provided that for the purposes of this chapter, the following costs may be recoverable pursuant to this section:

(1) Commission-approved operating costs for particular utility-owned fossil powerplants or units, at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is deemed needed for the reactive power/voltage support by the Independent System Operator, provided that the units are otherwise authorized to recover market-based rates and provided further that for an electrical corporation that is also a gas corporation and that serves at least four million customers as of December 20, 1995, the commission shall allow the electrical corporation to retain any earnings from operations of the reactive power/voltage support plants or units and shall not require the utility to apply any portions to offset recovery of transition costs. Cost recovery under the cost recovery mechanism shall end on December 31, 2001.

(2) An electrical corporation that, as of December 20, 1995, served at least four million customers, and that was also a gas corporation that served less than four thousand customers, may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buy-out costs associated with the

1 contracts to the extent the costs are determined to be reasonable by
2 the commission.

3 (d) Be adjusted throughout the period through March 31, 2002,
4 to track accrual and recovery of costs provided for in this
5 subdivision. Recovery of costs prior to December 31, 2001, shall
6 include a return as provided for in Decision 95-12-063, as
7 modified by Decision 96-01-009, together with associated taxes.

8 (e) (1) Be allocated among the various classes of customers,
9 rate schedules, and tariff options to ensure that costs are recovered
10 from these classes, rate schedules, contract rates, and tariff
11 options, including self-generation deferral, interruptible, and
12 standby rate options in substantially the same proportion as similar
13 costs are recovered as of June 10, 1996, through the regulated retail
14 rates of the relevant electric utility, provided that there shall be a
15 firewall segregating the recovery of the costs of competition
16 transition charge exemptions such that the costs of competition
17 transition charge exemptions granted to members of the combined
18 class of residential and small commercial customers shall be
19 recovered only from these customers, and the costs of competition
20 transition charge exemptions granted to members of the combined
21 class of customers, other than residential and small commercial
22 customers, shall be recovered only from these customers.

23 (2) Individual customers shall not experience rate increases as
24 a result of the allocation of transition costs. However, customers
25 who elect to purchase energy from suppliers other than the Power
26 Exchange through a direct transaction, may incur increases in the
27 total price they pay for electricity to the extent the price for the
28 energy exceeds the Power Exchange price.

29 (3) The commission shall retain existing cost allocation
30 authority, provided the firewall and rate freeze principles are not
31 violated.

32 (f) The provisions of this section shall be repealed as of January
33 1, 2002.

34 SEC. 10. Section 379 of the Public Utilities Code is amended
35 to read:

36 379. Nuclear decommissioning costs shall be recovered as a
37 nonbypassable charge until the time as the costs are fully
38 recovered. The commission may accelerate the recovery of
39 decommissioning costs consistent with the public interest.

SEC. 11. Article 16 (commencing with Section 399.20) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 16. Electricity Market Stabilization

399.20. For the purposes of this article, the following terms shall have the following meanings:

(a) (1) “Electrical corporation debt repayment set-aside” means a nonbypassable rate and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to allow the electrical corporation to recover all or any portion of both (A) qualified costs, and (B) the costs of providing, recovering, financing, or refinancing the qualified costs through a plan approved by the commission in the financing order, including, but not limited to, the costs of issuing, servicing and retiring electricity market stabilization bonds. For the purposes of this article, an electrical corporation debt repayment set-aside shall be imposed on a nonbypassable basis at a uniform rate per kilowatthour of electricity consumed pursuant to Section 399.25.

(2) If requested by the electrical corporation in its application for a financing order, an electrical corporation debt repayment set-aside shall include nonbypassable rates and other charges to recover federal and state taxes whose recovery period is modified by the transactions approved in the financing order.

(b) “Electricity market stabilization bonds” means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture or other agreement of a financing entity, the proceeds of which are used, directly or indirectly, to provide, recover, finance, or refinance qualified costs, and that are directly or indirectly secured by, or payable from, transition property.

(c) “Financing entity” means an electrical corporation or any entity designated by the electrical corporation to issue electricity market stabilization bonds pursuant to this article.

(d) “Financing order” means an order of the commission adopted in accordance with this article approving an electrical corporation debt repayment set-aside. A financing order shall

1 include, without limitation, a procedure for the expeditious
2 approval by the commission of periodic adjustments to the
3 electrical corporation debt repayment set-aside included therein to
4 ensure recovery of the qualified costs and the costs of issuing,
5 servicing, refinancing, and retiring the electricity market
6 stabilization bonds approved by the financing order.

7 (e) “Net undercollected costs” means the difference between
8 the cost of the energy provided by the electrical corporation and
9 the energy related revenues received by the electrical corporation
10 from retail customers from May 1, 2000 to January 18, 2001,
11 inclusive.

12 (f) “Qualified costs” means, with respect to an electrical
13 corporation, all of the following:

14 (1) The net undercollected costs in the amount determined
15 pursuant to Section 399.22.

16 (2) Interest associated with the net undercollected costs prior to
17 the issuance of bonds as determined pursuant to Section 399.22.

18 (g) Notwithstanding any other provision of law an electrical
19 corporation may not recover more than two billion five hundred
20 million dollars (\$2,500,000,000) of qualified costs.

21 (h) (1) “Stabilization property” means the property right
22 created pursuant to this article including, without limitation, the
23 right, title, and interest of an electrical corporation or its transferee:

24 (A) In and to the tariff established pursuant to a financing order,
25 as adjusted from time to time in accordance with the financing
26 order, and to all revenues, collections, claims, payments, monies,
27 or proceeds of or arising from the tariff.

28 (B) To be paid the amount that is determined in a financing
29 order to be the amount that the electrical corporation or its
30 transferee is lawfully entitled to receive pursuant to the provisions
31 of this article.

32 (C) In and to all revenues, collections, claims, payments,
33 monies, or proceeds of or arising from an electrical corporation
34 debt repayment set-aside that is the subject of a financing order.

35 (D) To the nonbypassable rates and other charges referred to in
36 subdivision (a) imposed pursuant to a financing order.

37 (E) In and to all rights to obtain adjustments to the tariff
38 pursuant to the terms of the financing order.

39 (2) “Stabilization property” shall constitute a current property
40 right notwithstanding the fact that the value of the property right

will depend on consumers using electricity or, in those instances where consumers are customers of a particular electrical corporation, the electrical corporation performing certain services.

(3) Stabilization property shall have all of the characteristics of and be subject to all the provisions governing transition property as set forth in Sections 842, 843, 844, and 845.

399.21. (a) Electricity market stabilization bonds pursuant to this article may only be issued by an electrical corporation serving more than 4,000,000 customers which is also a gas corporation serving fewer than 5000 customers. To issue electricity market stabilization bonds the electrical corporation shall submit to the commission an application to issue electricity market stabilization bonds in an amount necessary to recover qualified costs. No electricity market stabilization bonds may be issued without commission approval.

(b) The commission shall approve the application (1) upon verification of the qualified costs pursuant to Section 399.22, and (2) upon determination that the electrical corporation and its holding company have entered into a binding and enforceable agreement with the state in which, at a minimum, the electrical corporation and its holding company agree to and perform all of the following:

(1) Sell to retail end-use customers all electricity generated by assets owned by the electrical corporation and at cost-based rates as determined by the commission.

(2) Apply the proceeds of the electricity market stabilization bonds, after payment of issuance costs, in accordance with the intent of subdivision (c).

(3) Provide the Department of Water Resources or its designee with the entire output from the Sunrise generating facility for a term of not less than 10 years at cost-of-service based rates as determined by the commission. Terms and conditions of the agreement shall be set forth in a contract executed between the electrical corporation and its holding company, and the Department of Water Resources or its designee.

(4) Convey electrical corporation-owned land to the state pursuant to Article 17 (commencing with Section 399.30).

(5) Dismiss, with prejudice, any and all legal claims the electrical corporation and its holding company may have or

1 relinquish any legal claim the electrical corporation and its holding
2 company could have had against the State of California or any
3 agency, department or subdivision thereof, the federal
4 Government, or the commission for a taking or a violation of the
5 filed rate doctrine arising from or related to the facts asserted in the
6 litigation; and any claims challenging actions taken by the
7 commission, or actions that the commission failed to take, to
8 implement Assembly Bill 1 of the 2001–02 First Extraordinary
9 Session (Ch. 4, Stats. 2001–02 1st Ex. Sess.) and Assembly Bill
10 6 of the First Extraordinary Session (Ch. 2, Stats. 2001–02 1st Ex.
11 Sess.).

12 (6) Resume procurement of the full net short needs and electric
13 requirements for retail customers within the electrical
14 corporation’s service area as soon as the company is deemed
15 creditworthy or January 1, 2003, whichever occurs sooner.

16 (7) Relinquish all claims against the state for commandeering
17 the electrical corporation’s block forward market contracts
18 purchased through the California Power Exchange.

19 (8) Provide the state with an irrevocable option for a period of
20 not less than five years to purchase the transmission facilities
21 owned by the electrical corporation at the net book value of those
22 facilities.

23 (9) Apply four hundred million dollars (\$400,000,000),
24 consisting of the tax refund of the estimated quarterly tax
25 payments for the 2000 taxable year and an additional amount equal
26 to the federal loss carryback that the electrical corporation would
27 have had if it were not part of its holding company’s consolidated
28 group of taxpayers, to the reduction or elimination of the past debt
29 of the electrical corporation in order to restore the creditworthiness
30 of the electrical corporation by the earliest feasible date.

31 (c) It is the intent of the Legislature in authorizing the issuance
32 of a financing order pursuant to this article that any revenues
33 derived from the issuance of electricity market stabilization bonds
34 for the amount authorized pursuant to this article shall be expended
35 for the following purposes:

36 (1) Not more than \$1.2 billion for payment by the electrical
37 corporation to banks or other lending institutions for outstanding
38 debt consisting of notes, commercial paper, or other evidence of
39 indebtedness.

(2) Not more than \$1.3 billion for payment to qualifying facilities for electricity sold to the electrical corporation by those facilities.

(d) It is the intent of the Legislature that disposition of any debt or charges imposed on the electrical corporation by the power exchange, by the Independent System Operator, or by any electrical generator other than a qualifying facility for energy purchased on or before January 31, 2001, shall be the responsibility of the electrical corporation and its holding company and shall not be the responsibility of ratepayers.

(e) The binding and enforceable agreement in subdivision (b) shall be enforceable by the commission in proceedings.

399.22. This section shall apply to all electrical corporations subject to Section 399.21.

(a) The commission shall verify for an electrical corporation the amount of the qualified costs and other amounts permitted to be recovered through an electrical corporation debt repayment set-aside within 60 days of the date of submission of the amount to be verified. The commission review may only be for the purpose of verifying recorded amounts and making any adjustments resulting from that verification. Notwithstanding any other provision of law, qualified costs and other amounts permitted to be recovered through an electrical corporation debt repayment set-aside shall be recoverable in accordance with this article.

(b) (1) Notwithstanding any other provision of law, the commission shall establish, within 60 days of the filing of an application of an electrical corporation, an electrical corporation debt repayment set-aside designed to enable the electrical corporation to recover the qualified costs described in the application over an amortization period to be determined consistent with this article.

(2) The electrical corporation debt reduction set-aside shall be established by the adoption of a financing order as set forth in this section. The commission shall establish an electrical corporation debt reduction set-aside sufficient to enable the electrical corporation to recover the full amount of its qualified costs set forth in the financing order.

(3) Customers, as specified in Section 399.25, shall continue to pay the electrical corporation debt reduction set-aside in accordance with the financing order until the electrical corporation

1 has recovered the qualified costs set forth in the financing order
2 and, if electricity market stabilization bonds have been issued in
3 connection therewith, until those bonds are paid in full by the
4 financing entity.

5 (c) The commission shall issue a financing order in accordance
6 with this article to facilitate the provision, recovery, financing, or
7 refinancing of qualified costs. A financing order shall be adopted
8 only upon the application of an electrical corporation and shall
9 become effective in accordance with its terms only after the
10 electrical corporation files with the commission the electrical
11 corporation's written notice of intent to comply with all terms and
12 conditions of the financing order. A financing order shall specify
13 the conditions to the implementation of the terms of that financing
14 order. Notwithstanding Section 1756, Section 1759, or any other
15 provision of law, no court, except the Supreme Court, has
16 jurisdiction to review, reverse, correct, or annul any financing
17 order, or to suspend or delay the execution or operations thereof,
18 or to enjoin, restrain, or interfere with the commission in the
19 performance of its official duties in respect thereof, as provided by
20 law and the rules of the court.

21 (d) Notwithstanding Section 455.5, Section 1708, or any other
22 provision of law, except as otherwise provided in this subdivision,
23 the financing orders and the electrical corporation debt repayment
24 set-aside shall, upon the effectiveness of the financing orders, be
25 irrevocable and the commission may not have authority either by
26 rescinding, altering, or amending the financing order or otherwise,
27 to revalue or revise for ratemaking purposes the qualified costs, or
28 the costs of providing, recovering, financing, or refinancing the
29 qualified costs, determine that the electrical corporation debt
30 repayment set-aside is unjust or unreasonable, or in any way
31 reduce or impair the value of stabilization property either directly
32 or indirectly by taking the electrical corporation debt repayment
33 set-aside into account when setting other rates for the electrical
34 corporation; nor shall the amount of revenues arising with respect
35 thereto be subject to reduction, impairment, postponement, or
36 termination. Except as otherwise provided in this paragraph, the
37 state does hereby pledge and agree with the electrical corporation,
38 the owners of stabilization property, and holders of electricity
39 market stabilization bonds that the state shall neither limit nor alter
40 the electrical corporation debt repayment set-aside, stabilization

property, financing orders, and all rights thereunder until the electrical corporation has recovered all qualified costs, and if electricity market stabilization bonds have been issued in connection therewith, obligations under those bonds, together with the interest thereon, are fully met and discharged, provided that nothing contained in this section shall preclude the limitation or alteration of these matters if adequate provision is made by law for the protection of the owners and holders. That pledge shall be deemed to be part of a financing order upon adoption thereof by the commission. Notwithstanding any other provision of this section, the commission shall approve the adjustments to the electrical corporation debt repayment set-aside as it determines to be necessary to ensure timely recovery of all qualified costs that are the subject of the pertinent financing order, and the cost of capital associated with the provision, recovery, financing, or refinancing thereof, including the cost of issuing, servicing, and retiring any electricity market stabilization bonds issued to finance qualified costs contemplated by the financing order.

(e) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval thereof within 60 days of the electrical corporation's making application therefor.

(f) The electrical corporation debt repayment set-aside shall constitute stabilization property when, and to the extent that, a financing order authorizing the electrical corporation debt repayment set-aside has become effective in accordance with this article, and the stabilization property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this article for the period and to the extent provided in the financing order, but in any event until (1) the electrical corporation has recovered the qualified costs and (2) the electricity market stabilization bonds are paid in full, including all principal, interest, premium, costs, and arrearages thereon.

399.23. With respect to an electrical corporation debt repayment set-aside relating to financing orders providing for recovery of qualified costs, the obligation of the electrical corporation to collect and remit the electrical corporation debt repayment set-aside consistent with a financing order shall continue irrespective of whether that electrical corporation is

1 providing electric power or other services to the retail customers
2 obligated to pay the electrical corporation repayment set-aside.

3 399.24. The authority of the commission to issue financing
4 orders providing for recovery of qualified costs shall expire on
5 December 15, 2006. The expiration of the authority shall have no
6 effect upon financing orders adopted by the commission pursuant
7 to this article or any stabilization property arising therefrom, or
8 upon the charges authorized to be levied thereunder, or the rights,
9 interests, and obligations of the electrical corporation or a
10 financing entity or holders of electricity market stabilization bonds
11 pursuant to the financing order, or the authority of the commission
12 to monitor, supervise, or take further action with respect to the
13 order in accordance with the terms of this article and of the order.

14 399.25. The electrical corporation debt repayment set-aside
15 established by order of the commission pursuant to this article
16 shall be paid exclusively by customers with electric loads
17 exceeding ~~125~~ 500 kilowatt billing demand.

18 ~~399.26. If an electrical corporation and its holding company~~
19 ~~enter into a binding and enforceable agreement pursuant to~~
20 ~~subdivision (b) of Section 399.21, and the commission issues an~~
21 ~~order approving it pursuant to subdivision (c) of Section 399.21,~~
22 ~~the commission may not require any other financial contribution~~
23 ~~from the holding company, nor impose any penalty on the holding~~
24 ~~company for violation of the first priority condition contained in~~
25 ~~Commission Decision number D-88-01-063, for events occurring~~
26 ~~on or before January 18, 2001.~~

27 SEC. 12. Article 17 (commencing with Section 399.30) is
28 added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
29 Code, to read:

30
31 Article 17. Conservation Lands
32

33 399.30. (a) An electrical corporation authorized to recover
34 qualified costs pursuant to Article 16 (commencing with Section
35 399.20) shall transfer ~~to the state or~~ to a trust specified in
36 subdivision (b) its complete interest, as of the effective date of this
37 section, in the lands identified in this subdivision. Lands to be
38 transferred, if not identified by legal description or the assessor's
39 parcel number, shall contain sufficient information regarding the
40 nature, general location, scope, and extent of the real property,

1 fixtures, improvements, or facilities that would place third parties
2 on inquiry notice of the right, title, or interest claimed by the state
3 or its subdivisions or creations, by reason of the deed, assignment,
4 or other instrument of conveyance. The lands identified in this
5 subdivision shall be conveyed ~~in fee and held by the trust for a~~
6 ~~determination pursuant to this section~~, except that conservation
7 easements shall be transferred on lands that are subject to licensure
8 by the Federal Energy Regulatory Commission and that are
9 producing electricity as of the effective date of the act adding ~~this~~
10 ~~section, and all other interests in watershed, inland, forest, desert,~~
11 ~~and coastal land or lands of potential conservation value owned by~~
12 ~~the electrical corporation on the effective date of the act adding this~~
13 ~~section shall be conveyed as they are held by the electrical~~
14 ~~corporation; this section.~~

15 (1) Fresno and Madera Counties: Jackass Meadows containing
16 approximately 280 acres, Big Creek 3 and Big Creek 4 together
17 consisting of approximately 253 acres, Huntington Lake,
18 consisting of approximately 815 acres, Shaver Lake consisting of
19 approximately 21,000 acres, and unknown acreage along Dinkey
20 Creek.

21 (2) Various properties in the eastern Sierra Nevada consisting
22 of approximately 825 acres and known generically as the Lee
23 Vining HQ property, Lundy Reservoir, Bishop Creek Canyon,
24 Bishop Creek Powerhouses 3, 5, and 6, Owens Lake, and Rush
25 Creek Powerhouse.

26 ~~(3) Ventura County: Ormand Beach and Mandalay Beach~~
27 ~~properties, consisting of approximately 200 acres.~~

28 ~~(4) Los Angeles County: Approximately 82 acres of the Los~~
29 ~~Angeles River floodplain, plus approximately 75 acres in the Los~~
30 ~~Angeles River corridor, and _____ acres adjacent along and near the~~
31 ~~San Gabriel River, and approximately 10 acres known as the Los~~
32 ~~Cerritos wetlands.~~

33 ~~(5) Orange County: Approximately 20 acres known as the~~
34 ~~Huntington Beach Wetlands.~~

35 ~~(6) Orange County: Approximately 110 acres of upland coastal~~
36 ~~sage scrub near Viejo.~~

37 ~~(7) San Diego County: Approximately 140 acres of wetlands in~~
38 ~~the San Dieguito River Valley.~~

39 ~~(b) At its sole option, the state may establish a trust to hold the~~

(b) The state shall establish a trust to hold the interests in land conveyed by the electrical corporation. The state ~~may~~ shall seek the assistance of qualified nonprofit organizations referenced in Section 815.3 of the Civil Code to establish and operate the trust. The trust, ~~if it is formed,~~ shall hold the interests in land conveyed pursuant to subdivision (a) by the electrical corporation. ~~If a trust is not formed, the Secretary of the Resources Agency shall designate to whom fee title or lesser interests in land shall be conveyed, held, and managed on behalf of the state corporation.~~

(c) ~~The trust, if it is formed, and acting at the direction of the Secretary of the Resources Agency, shall undertake a review process of the lands that will consider the retention of fee title or conservation easement, the use or uses of the lands, including the conservation, natural resource, public recreation, and public trust values of the lands, and including the possible disposition of the lands or interests in land conveyed to the state. The review process shall include formation of an advisory council, chaired by the secretary or his or her designee, that consists equally of representatives of state government, local governments, commercial interests, and conservation interests. If a trust is not formed, the secretary shall undertake the review process and appoint the advisory council as prescribed in this subdivision.~~ State government representatives shall be appointed from among the Resources Agency, the Wildlife Conservation Board, the State Lands Commission, the Department of Parks and Recreation, the Department of Fish and Game, and the Coastal Conservancy. Ex officio members may be appointed at the discretion of the secretary.

(d) The purpose of the public review process is to ensure the permanent conservation of these lands for their public interest value, including fish, wildlife, and habitat; compatible human recreation; protection of open space and aesthetic values; preservation of historic and cultural resources; and protection of water quality and watershed functions. An additional objective is to increase management efficiency by consolidating mixed public and electrical corporation lands under public ownership.

(e) Notwithstanding subdivision (d), nonutility uses of the property existing as of the time the easement or other real property interest is conveyed shall be permitted to continue subject to certification by the Secretary of the Resources Agency that public

1 trust values will obtain a net benefit. If otherwise consistent with
 2 existing law, utility uses, including the maintenance, repair,
 3 replacement, and installation of public utility infrastructure,
 4 including, but not limited to, water and sewer pipelines, and
 5 electric and telecommunication lines, existing as of the time the
 6 easement or other real property interest is conveyed, shall be
 7 permitted to continue. If otherwise consistent with existing law,
 8 expansion of hydroelectric utility facilities located on the property
 9 as of the time of conveyance to the state shall be permitted, subject
 10 to the approval of the state and federal agencies having jurisdiction
 11 over any expansion, and subject to certification by the secretary
 12 that public trust values will obtain a net benefit by that expansion.

13 (f) Notwithstanding subdivision (d), timber harvesting
 14 activities for which permits have been obtained or that are eligible
 15 to obtain renewed permits as of the effective date of the act that
 16 added this section shall be permitted on the conveyed lands,
 17 subject to modification based on management and disposition
 18 plans approved by the state. Applications for new timber harvest
 19 plans subsequent to that effective date shall be granted only upon
 20 certification by the Department of Forestry and Fire Protection
 21 that is approved by the Department of Fish and Game and the
 22 appropriate regional water control board that the activities are
 23 accompanied by a mitigation plan that results in a net benefit to
 24 public trust resources.

25 (g) The maintenance, repair, replacement, and installation of
 26 public utility infrastructure, including, but not limited to, water
 27 and sewer pipelines, and electric and telecommunications lines for
 28 nonutility and other uses shall be allowed, subject to the extent
 29 those activities are permitted by the terms of the management and
 30 disposition plans approved by the state.

31 (h) Income derived from the conveyed lands from activities
 32 exclusive of hydropower generation that were authorized by the
 33 electrical corporation prior to the effective date of the act that
 34 added this section shall remain assets of the electrical corporation
 35 or its designees. Income derived from these lands subsequent to
 36 that effective date exclusive of hydropower generation shall
 37 remain the property of the state and shall be used to defray
 38 expenses associated with these property transfers.

39 (i) The Secretary of the Resources Agency shall certify that
 40 lands found to possess significant public values shall be managed

1 in perpetuity by the state to maintain or enhance those values. The
2 public review process shall not recommend actions that are
3 inconsistent with these objectives. The state shall have the right to
4 impose conditions to protect these conservation, open space,
5 watershed, and public trust resources for all lands that are
6 eventually transferred or otherwise disposed of by the state
7 following the public review process.

8 (j) The state may transfer its title or possessory interests that
9 ensure management in perpetuity for conservation of those public
10 trust values in those lands to *the electrical corporation*, state,
11 federal, or local governmental agencies, special districts, Indian
12 tribes or tribal entities, or nonprofit organizations qualified under
13 Section 170(h) of the Internal Revenue Code and Section 815.3 of
14 the Civil Code, that are competent and appropriate to own or
15 manage the lands as required by this section, along with sale of
16 remaining possessory interest to a compatible third party.

17 (k) New or modified economic uses of lands found to possess
18 significant public values may occur if compatible with the primary
19 purpose of protection or enhancement of existing environmental
20 and recreational uses.

21 (l) Lands not found to possess significant public values may be
22 used for land exchanges to protect other lands that possess
23 significant public values or may be disposed of to generate income
24 to acquire those other lands.

25 (m) Final management or disposition recommendations
26 concerning the lands identified in subdivision (a) are to be made
27 to the Secretary of the Resources Agency within two years of the
28 effective date of the act adding this section. Pursuant to directives
29 of the secretary, and with the same public process established in
30 this section, periodic reviews of the management of these lands or
31 interests in these lands that are transferred to the state by an
32 electrical corporation, are authorized in order to assess the
33 stewardship of public trust resources.

34 (n) Existing public access on these lands shall be maintained
35 during the public review process unless a different arrangement is
36 agreed upon that is separately negotiated by and between the
37 electric corporation and the state.

38 (o) Notwithstanding any other provision of law, the electrical
39 corporation shall retain legal responsibility for all environmental
40 liabilities arising by operation of law based on its prior ownership



1 and interest in the lands conveyed to the state. The electrical
2 corporation shall indemnify and hold harmless the state or the trust
3 or the state's successors and assigns against liability arising out of
4 the electrical corporation's use or ownership prior to the transfer,
5 whether that liability is based on ownership in fee or another lesser
6 interest in the conveyed lands.

7 (p) The Secretary of the Resources Agency alone shall have the
8 authority to transfer, encumber, or dispose of lands or interests in
9 lands conveyed to the state by the electrical corporation, except
10 that the secretary may designate a state agency or department with
11 expertise in land ownership and conveyance transactions to be his
12 or her designee.

13 (q) *With respect to any lands transferred to a trust pursuant to*
14 *this article, the state shall provide payments in lieu of property*
15 *taxes to the affected local agency, as defined by subdivision (a) of*
16 *Section 95 of the Revenue and Taxation Code, in amounts not*
17 *greater than the property tax revenues that would have been*
18 *received by the local agency if the property had continued to be*
19 *owned by the electrical corporation.*

20 SEC. 13. Section 454.10 is added to the Public Utilities Code,
21 to read:

22 454.10. (a) In order to assure that the service provided by
23 electrical corporations is adequate, the commission may require
24 each electrical corporation that provides distribution service to
25 make direct investments in electric generation facilities whose
26 output is dedicated to serve the customers connected to its
27 distribution grid.

28 (b) After a hearing, the commission shall approve rates
29 sufficient to enable the electrical corporation to recover its
30 reasonable costs of operation, its reasonable investment in the
31 electric generation facilities and a reasonable return on its
32 investment, in accordance with Section 451.

33 (c) An electric corporation may meet the obligation described
34 in this section by entering into projects for electric generation
35 facilities jointly with the California Consumer Power and
36 Conservation Financing Authority.

37 (d) The commission may conduct proceedings, enter orders
38 and undertake such actions as it considers necessary or appropriate
39 to carry out the provisions of this section.

1 SEC. 14. Section 454.11 is added to the Public Utilities Code,
2 to read:

3 454.11. In the case of an electrical corporation serving more
4 than 4,000,000 customers which is also a gas corporation serving
5 fewer than 5,000 customers and which has entered into a binding
6 and enforceable agreement pursuant to subdivision (b) of Section
7 399.21, that has been approved by the commission pursuant to
8 subdivision (e) of Section 399.21, the commission shall not
9 reduce, prior to January 1, 2006, the authorized rate of return on
10 generation assets below the level approved for distribution assets
11 in the electrical corporation's last general rate case.

12 SEC. 15. If any part of the provisions of this act, or the
13 application thereof to any person or circumstance, is held invalid,
14 the remainder of this act, including the application of such part or
15 provision to other persons or circumstances, shall not be affected
16 thereby, and this act shall otherwise continue in full force and
17 effect and shall otherwise be fully operative. To this end, the
18 provisions of this act, and each of them, are hereby declared to be
19 severable.

20 SEC. 16. No reimbursement is required by this act pursuant
21 to Section 6 of Article XIII B of the California Constitution
22 because the only costs that may be incurred by a local agency or
23 school district will be incurred because this act creates a new crime
24 or infraction, eliminates a crime or infraction, or changes the
25 penalty for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition of a
27 crime within the meaning of Section 6 of Article XIII B of the
28 California Constitution.

29 ~~SEC. 17. This act is an urgency statute necessary for the~~
30 ~~immediate preservation of the public peace, health, or safety~~
31 ~~within the meaning of Article IV of the Constitution and shall go~~
32 ~~into immediate effect. The facts constituting the necessity are:~~

33 ~~In order to allow the implementation of measures to enable the~~
34 ~~restoration of the economic health of California's electrical~~
35 ~~utilities as soon as possible and to thereby minimize disruption of~~
36 ~~the California economy, it is necessary that this act take effect~~
37 ~~immediately.~~

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